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## OLR Bill Analysis

sHB 5466 (as amended by House "A")\*

### ***AN ACT CONCERNING DEPARTMENT OF REVENUE SERVICES' PROCEDURES FOR BACKGROUND CHECKS FOR JOB APPLICANTS AND TAXATION OF COMPRESSED NATURAL GAS UNDER THE MOTOR VEHICLE FUELS TAX.***

#### **SUMMARY:**

This bill makes numerous changes to the tax and tobacco settlement statutes. Among other things, it:

1. requires prospective Department of Revenue Services (DRS) employees to (a) disclose their criminal convictions and pending charges, (b) be fingerprinted, and (c) submit to state and national criminal history record checks under Connecticut's uniform criminal record check procedure;
2. requires the DRS commissioner to annually issue information about how he calculates the motor vehicle fuels tax on gaseous fuels, except propane gas stored in containers or cylinders leased to motor vehicle owners;
3. makes numerous changes in the state's tobacco settlement law to implement the Nonparticipating Manufacturer (NPM) Adjustment Settlement Agreement (i.e., the May 24, 2013 settlement between the state and certain tobacco product manufacturers);
4. modifies the starting point (i.e., Connecticut taxable estate) for calculating the estate tax for those who die on or after January 1, 2015 and gives such estates a tax credit for certain gift taxes paid;
5. authorizes the DRS commissioner to publicly list the people for whom he denied, revoked, or suspended a license, permit, or certificate;

6. requires him to state on the publicly available delinquent taxpayers list why he intends to remove a name from the list;
7. moves up the deadline for remitting monthly sales taxes and filing sales tax returns from the last to the 20<sup>th</sup> day of the month following the monthly return period and authorizes the commissioner to require weekly sales tax returns from retailers that are delinquent in remitting the tax;
8. requires the commissioner to exchange information about delinquent taxpayers with financial institutions;
9. requires trusts and estates, when calculating their Connecticut income tax, to add certain lump sum distributions to their Connecticut fiduciary adjustment;
10. subjects to Connecticut's personal income tax the income nonresidents receive from (a) nonqualified deferred compensation plans attributable to service performed in Connecticut and (b) sale or transfer of shares in a business that owns real property in Connecticut; and
11. modifies how nonresidents' business income must be apportioned to Connecticut.

EFFECTIVE DATE: Upon passage unless noted otherwise.

\*House Amendment "A" requires the DRS commissioner to issue information about how he calculates the motor vehicle fuels tax on all gaseous fuel, not just compressed natural gas, as in the underlying bill and adds the provisions regarding:

1. the propane gas,
2. the tobacco settlement law,
3. estate tax changes,
4. the effective date and legislative intent of estate tax changes enacted in PA 13-247,

5. DRS taxpayer list,
6. sales tax remittance,
7. identifying delinquent taxpayer assets,
8. Connecticut fiduciary adjustment,
9. nonresident income derived from Connecticut sources, and
10. makes minor and technical changes.

EFFECTIVE DATE: Upon passage unless noted otherwise.

## **§ 1 — BACKGROUND CHECKS FOR PROSPECTIVE DRS EMPLOYEES**

This bill requires prospective DRS employees to (1) disclose their criminal convictions and pending charges, (2) allow themselves to be fingerprinted, and (3) submit to state and national criminal history record checks under Connecticut's uniform criminal record check procedure. These requirements apply to (1) non-state employees applying for employment with DRS and (2) state employees seeking to transfer to the DRS. DRS must enforce the requirements consistent with the law prohibiting employers from requiring prospective employees to disclose information in certain erased criminal records (see BACKGROUND).

Under the bill, prospective DRS employees must state in writing whether (1) they have ever been convicted of a crime or (2) charges are pending against them on the date they apply for a DRS position. If charges are pending, the applicant must identify them and the court in which they are pending.

## **§ 2 — MOTOR FUELS TAX ON GASEOUS FUELS**

Beginning June 15, 2014, the bill also requires the DRS commissioner, in consultation with the energy and environmental protection commissioner, to issue annually information about how he calculates the motor vehicle fuels tax on gaseous fuel (e.g., natural gas or propane). The information must include the conversion factor used

to determine the liquid gallon equivalent of such fuel. The factor must be consistent with applicable federal standards and be applied to the 12-month period beginning on the following July 1.

With regard to propane gas, the bill requires the commissioner to determine the liquid gallon equivalent only for propane gas used to power a motor vehicle owned by a person who purchases the gas and stores it in a tank or cylinder he or she owns. The commissioner does not have to provide this information for propane gas stored in a leased tank or cylinder.

### **§§ 3-10 — TOBACCO SETTLEMENT LAW**

The law requires tobacco product manufacturers that sell cigarettes in Connecticut to either (1) enter into, and perform financial obligations under, the master settlement agreement between Connecticut and four leading tobacco companies or (2) pay into a qualified escrow account a specified amount for each cigarette they sell in the state. Tobacco companies that choose the former option are considered “participating manufacturers” and those that choose the latter are “nonparticipating manufacturers” (NPMs).

This bill makes numerous changes in the state’s tobacco settlement law to implement the NPM Adjustment Settlement Agreement (i.e., the May 24, 2013 settlement between the state and participating manufacturers). The agreement modified the tobacco master settlement agreement and, among other things, broadened the state’s enforcement responsibilities regarding illegal contraband cigarette sales.

EFFECTIVE DATE: January 1, 2015

### **§§ 3-5 — *Escrow Contribution***

***Basis and Frequency.*** The bill bases the escrow payment NPMs must make on the number of cigarettes sold in Connecticut that are subject to the cigarette tax or, in the case of roll-your-own tobacco, the tobacco products tax, rather than basing it on actual excise taxes collected. It excludes cigarettes (1) sold on federal military

installations, (2) sold by a Native American tribe to a tribe member on the tribe's land, and (3) otherwise exempt from state excise tax under federal law. As under current law, the payment applies to each cigarette sold in Connecticut by a covered manufacturer during the year in question, including both direct sales and sales through distributors, dealers, or similar intermediaries.

The bill requires DRS to adopt regulations needed to determine the amount of excise tax required to be paid, not just the actual tax paid, by each tobacco product manufacturer.

Under current law, NPMs annually pay into their escrow accounts a specified amount for each cigarette they sold in the prior year. For sales in 2013, the escrow payment was \$.0299790 per cigarette (based on the 2007 amount of \$.0188482, as adjusted for inflation).

Beginning January 1, 2015, the bill requires NPMs to make quarterly, rather than annual, escrow fund payments, based on the per cigarette amount required under current law. It also requires them to certify to the attorney general that they comply with the escrow fund payments quarterly, rather than annually, and makes conforming changes.

***Penalties for Noncompliance.*** The bill makes any "importer" for a NPM located outside the United States jointly and severally liable (see BACKGROUND) with the manufacturer for escrow fund deposits and any penalties imposed for violating the escrow requirements. Under the bill, an "importer" is any person (1) in the United States to whom cigarettes manufactured in another country are shipped or consigned, (2) who removes cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse, or (3) who unlawfully brings cigarettes into the United States.

By law, the attorney general may sue nonparticipating manufacturers that violate the escrow requirements and, if the court finds a violation, impose civil penalties of up to 5% of the improperly withheld amount for each day of violation, up to 100% of that amount. For a knowing violation, the penalty may be up to 15% of the

improperly withheld amount per day up to 300% of that amount. For a second knowing violation, a violator is barred from selling cigarettes in the state, either directly or indirectly, for up to two years. Each failure to make the required deposit is a separate violation.

### **§§ 6-7 — *Certification Requirements***

The law requires all manufacturers (participating and nonparticipating) whose cigarettes are directly or indirectly sold in Connecticut to annually certify, by April 30 and under penalty of false statement, to the DRS commissioner and attorney general that, as of the certification date, they are either participating in the master settlement agreement or complying with escrow requirements for nonparticipating manufacturers. The bill requires participating manufacturers also to certify that they are complying with the master settlement agreement's financial obligations.

The bill also requires each manufacturer to annually (1) certify that it or its importer holds a valid federal permit for engaging in such business (26 USC 5713), (2) provide a copy of the permit to the DRS commissioner, and (3) certify that it complies with federal tobacco manufacturer reporting and registration requirements (15 USC 375 et seq.). It bars manufacturers from including in their certifications any material representation that they know is false or inaccurate.

### **§ 8 — *DRS Directory***

By law, the DRS commissioner must make available to the public a directory of (1) manufacturers that have provided current and accurate certifications and (2) all brand families listed in those certifications. A brand family is a style of cigarette, such as menthol or lights, sold under the same trademark.

The bill generally prohibits the commissioner from listing brand families for any NPM with discrepancies in certain sales reports. The prohibition applies during any calendar year for which the NPM reports total nationwide federally taxable cigarette sales that exceed the sum of its sales on federally required monthly sales reports, by more than 5% of its total sales, or one million cigarettes, whichever is

less. The sales reports are the (a) nationwide sales reports it or its importer submitted to DRS and (b) any intrastate sales reports (15 USC 376 (a)). Under the bill, if a NPM fixes or satisfactorily explains the discrepancy between the reports within 10 days after receiving notice of the discrepancy from DRS, the commissioner may include or retain its brand families in the directory.

### **§ 9 — *Agent for Service of Process Requirements***

Under the bill, NPMs located outside of the United States must, as a condition of having their brand families listed or retained in the DRS directory, (1) require each of their brand family importers to appoint and maintain a Connecticut agent for service of process and (2) notify the DRS commissioner and attorney general of the agent in the same manner in which the NPMs notify them of their agent for service of process. The bill makes the secretary of state the agent for any importer who has not appointed an agent. Proceedings against such an importer may be brought by serving process on the secretary, but the secretary's appointment does not satisfy the agent appointment requirements for having the manufacturer's brand families listed in the DRS directory.

### **§§ 7 & 9 — *Surety Bond***

As a condition of having its brand families listed in the DRS directory, the bill requires NPMs to file a surety bond with the DRS commissioner for the greater of (1) \$25,000 or (2) the greatest amount of total escrow payments owed in any of the five calendar years before the bond's filing. The bond must be (1) in a form the attorney general approves and (2) issued by a bonding or insurance company authorized to do business in Connecticut. The bill also requires NPMs to include proof that they have posted the bond in their annual certification to the DRS commissioner and attorney general.

The bill allows the commissioner to execute on the bond if the NPM fails to make, or have made on its behalf, its required quarterly escrow deposits within 15 days following their due date. He may do so to recover (1) the delinquent escrow and (2) civil penalties and costs. The commissioner must deposit any delinquent escrow funds he recovers

into a qualified escrow fund or a reasonable alternative account he determines. Any escrow amounts above the amount recovered on the bond remain due from the NPM and its importers.

### **§ 10 — Information Sharing**

The bill allows the commissioner to disclose tax returns or return information (see BACKGROUND) to the attorney general if it is relevant to the state's implementation of the Master Settlement Agreement or the NPM Adjustment Settlement Agreement. It allows the attorney general to disclose the information under an agreement with an entity designated to serve as a data clearinghouse under the NPM Adjustment Settlement Agreement. He may also disclose a licensed cigarette or tobacco products distributor's tax information to a NPM that makes escrow fund contributions, as long as the disclosure is limited to information relating to the NPM's Connecticut sales.

The bill also broadens the purposes for which the commissioner and attorney general may share information they receive under the state's tobacco settlement law with other state, federal, and local agencies to include the enforcement of federal law. Currently, they may share the information with these other entities, but only to enforce Connecticut's or other states' tobacco settlement laws.

### **§ 10 — Reporting Requirements**

**Monthly Sales Reports.** The bill requires each manufacturer and importer to file a monthly report with the DRS commissioner and certify that the report is complete and accurate. The report, which manufacturers and importers must file within 15 days following the end of the month, must include the (1) total number of cigarettes they sold in the state that month, identified by name and number, including those sold through an affiliate; (2) cigarette manufacturer and brand family; and (3) cigarette purchasers. Manufacturers and importers satisfy this monthly reporting requirement by submitting federally required monthly sales reports to the commissioner and certifying that they are complete and accurate.

**Federal Excise Tax Returns.** The bill requires each manufacturer



and importer to submit to the (1) commissioner its federal excise tax returns and monthly operational reports within 30 days after the returns are filed or (2) United States Treasury a valid request or consent authorizing the federal Alcohol Tobacco Tax and Trade Bureau and, in the case of a foreign manufacturer or importer, United States Customs and Border Protection, to disclose the manufacturer's or importer's federal excise tax returns to the commissioner.

***Additional Reporting Requirements.*** The bill requires manufacturers and importers to disclose to the commissioner or attorney general, upon request, copies of all federally required sales reports they filed in other states.

It also allows the attorney general to require NPMs, importers, and stampers to produce information to allow him to determine whether a quarterly escrow deposit is adequate.

## **§§ 11-12 — ESTATE TAX CHANGES**

### ***Connecticut Taxable Estate and Gift Taxes Paid on Certain Taxable Gifts***

The bill modifies the starting point (i.e., Connecticut taxable estate) for calculating the estate tax for those who die on or after January 1, 2015. It does so by (1) excluding any Connecticut taxable gifts that are includible in the decedent's gross estate for federal estate tax purposes and (2) including the amount of any Connecticut gift tax the decedent or his or her estate paid during the three years preceding the decedent's death for gifts made by the decedent or his or her spouse.

The bill also gives such estates a tax credit for any gift taxes the decedent's spouse paid for Connecticut taxable gifts made by the decedent on or after January 1, 2005 that are includible in the decedent's gross estate. Existing law gives estates a credit for any Connecticut gift taxes paid on gifts made on or after January 1, 2005, as long as the credit does not exceed the estate tax due. The bill limits the total credits to no more than the estate tax due.

### ***Estate Tax Changes in PA 13-247***

PA 13-247 (§ 120) (1) conformed the law to DRS practice by modifying how estate taxes are calculated for Connecticut residents who have estate property in other states and (2) provided, for both resident and nonresident estates, that the state is permitted to calculate and levy the tax to the fullest extent permitted by the U. S. Constitution.

The bill states that the General Assembly intends these modifications to be clarifying in nature and applicable to all open estates. Under current law, these provisions apply to deaths on or after January 1, 2013. As under current law, the provisions became effective on June 19, 2013.

### **§ 13 — DRS TAXPAYER LIST**

#### ***Listing Actions Regarding Licenses, Permits, and Certificates***

The bill allows the DRS commissioner to create a public list of specific enforcement actions he took regarding licenses, permits, or certificates. He may list each person whose (1) application for a license, permit, or certificate was denied or (2) license was suspended, revoked, or not renewed. If he publishes the list, the commissioner must arrange it by the type of tax and may add the date he took the actions and the reasons for taking them.

#### ***Including Reasons for Removing a Taxpayer's Name from the Delinquent Taxpayer List***

By law, the DRS commissioner must maintain a publicly available list of delinquent taxpayers. The bill requires that, before removing a name from the list, the commissioner indicate on it his reasons for doing so. He must specifically indicate if the delinquency was (1) resolved by negotiated settlement, (2) paid in full, or (3) designated as uncollectable.

EFFECTIVE DATE: July 1, 2014

### **§§ 14 & 19 — SALES TAX**

#### ***Remittance Deadline***

The bill moves up the deadline for remitting monthly sales taxes

and filing sales tax returns from the last day to the 20<sup>th</sup> day of the month following the month covered by the return.

***Weekly Remittance for Delinquent Parties***

The bill allows the commissioner to require retailers that fail to pay the tax on time to file returns and pay the tax weekly. These weekly returns are due by the Wednesday following the end of the weekly period the return covers. The commissioner must notify affected retailers in writing, specifying how they must remit the tax. He must require weekly remittance for one year, starting on the notice's date.

Current law allows the commissioner to require parties collecting sales taxes to remit them for other than monthly or quarterly periods. Under the bill, if a weekly period straddles two months, retailers must still remit the tax for a week. In addition, retailers required to remit the tax on a weekly basis must also file required monthly or quarterly returns.

Retailers required to remit taxes on a weekly basis are subject to the law's penalties for failing to remit them, including revocation of their sales tax permits.

EFFECTIVE DATE: October 1, 2014

**§§ 15 & 20 — IDENTIFYING DELINQUENT TAXPAYER ASSETS**

The bill requires the DRS commissioner to contract with financial institutions doing business in Connecticut to exchange information about taxpayers who owe state taxes. Such institutions include banks, credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and other similar entities authorized to do business here.

Under the contract, the commissioner must provide to these institutions (1) each delinquent taxpayer's name, Social Security number, or other taxpayer identification numbers and (2) the amount of taxes due and payable for which every administrative or judicial remedy has been exhausted. Within 90 days after receiving this list, the financial institution must provide the commissioner with a list of its

account holders appearing on the commissioner's list, along with the account holder's Social Security number or taxpayer identification number and a statement about whether their account balance exceeds \$1,000.

The bill waives the existing statutory restrictions against releasing taxpayer information when the commissioner exchanges the information with a financial institution. It also relieves contracting institutions from liability to anyone for disclosing customer information to the commissioner or for any other good faith actions they take to comply with the bill.

#### **§ 16 — CONNECTICUT FIDUCIARY ADJUSTMENT**

When a trust or estate taxpayer determines its Connecticut adjusted gross income for state income tax purposes, the bill requires it to add any lump sum distributions it receives during the tax year. The required addition is any amount of the distribution that is not included in the trust's or estate's federal taxable income before deductions for distributions to beneficiaries.

EFFECTIVE DATE: Upon passage and applicable to taxable years beginning on or after January 1, 2014.

#### **§§ 17-18 — NONRESIDENT INCOME DERIVED FROM CONNECTICUT SOURCES**

##### ***Nonqualified Deferred Compensation Plans***

The bill extends the state income tax to nonresidents' income from nonqualified deferred compensation plans attributable to services performed in Connecticut. Such nonqualified plans are those under which an employer agrees to defer a portion of an employee's wages until a specified future date, thus delaying the employee's tax liability until the deferred amount is paid. Under the bill, the income subject to Connecticut's tax includes such income that is taxable for federal income tax purposes.

##### ***Sale or Disposition of Property Interest in an Entity***

The bill requires nonresidents to pay Connecticut income tax on

gains or losses from the sale or disposition of an interest in an entity (i.e., partnership, limited liability company, or S corporation) that owns certain real property in Connecticut.

Under the bill, all or a portion of the gain or loss from a nonresident taxpayer's sale or disposition of an interest in the entity is considered taxable in Connecticut if the entity owns real property in the state valued at 50% or more of the fair market value of the entity's total assets in the preceding two years. The Connecticut gain or loss from the transaction is the total federal gain or loss multiplied by the ratio of the fair market value of the entity's Connecticut real property to that of its total assets, as of the transaction date.

EFFECTIVE DATE: Upon passage and applicable to taxable years beginning on or after January 1, 2014.

### ***Apportioning Nonresident Business Income***

The bill modifies how nonresidents' business income is apportioned to Connecticut for income tax purposes by changing the way in which certain sales are sourced to Connecticut.

By law and unchanged by the bill, if a business is carried on partly in and partly outside of Connecticut, its gains and losses derived from or connected with Connecticut must be apportioned to the state. The business' proportion of net income, gain, loss, and deduction sourced to Connecticut equals its average percentage of property, payroll, and gross income in the state.

By law, a business' gross income percentage is calculated by dividing its gross Connecticut sales by its total sales. Under current law, property and service sales are sourced to Connecticut if they are negotiated or performed by an employee, agent, agency, or independent contractor chiefly situated at, contracted with, or sent from the business' Connecticut offices or branches (Conn. Agencies Regs. § 12-711(c)-4). The bill instead sources property sales to Connecticut if the property is delivered or shipped to a purchaser in the state, regardless of the FOB point (i.e., point at which title for the

goods transfers to the buyer) or other conditions of the sale.

EFFECTIVE DATE: Upon passage and applicable to taxable years beginning on or after January 1, 2014.

## **BACKGROUND**

### ***Nondisclosure of Information Contained in Erased Criminal Records***

The law prohibits all employers, including the state and its political subdivisions, from requiring prospective and current employees to disclose records of erased arrests, criminal charges, or convictions (CGS § 31-51i). It similarly prohibits employers from denying employment, or discharging an employee, solely because of information contained in such records. The records that the law covers relate to delinquency; family with service needs or youth offender status; criminal charges that have been dismissed, nolle, or resulted in not guilty findings; and absolute pardons.

Employment application forms requesting criminal history data must contain a statement informing applicants that (1) they are not required to disclose criminal history data subject to erasure, (2) the erasure of this data deems they were never arrested for the associated crime, and (3) they can swear under oath that they were never arrested for those crimes.

### ***Federal Standards on Natural Gas Conversion Factors***

The National Institute of Standards and Technology's *Uniform Laws and Regulations in Areas of Legal Metrology and Engine Fuel Quality Handbook 130* (2013) specify that a gallon of gasoline is equivalent to 2.567 kg (5.660 lbs.) of natural gas.

### ***Joint and Several Liability***

Joint and several liability is a form of liability used in civil cases where two or more people are found liable for damages. The winning plaintiff in such a case may collect the entire judgment from any one of the parties, or from any and all of the parties in various amounts until the judgment is paid in full. In other words, if any of the defendants do

not have enough money or assets to pay an equal share of the award, the other defendants must make up the difference.

### ***Tax Returns and Return Information***

By law, a “return” is any of the following filed with the DRS commissioner by, on behalf of, or with respect to, anyone: (1) a tax or information return; (2) an estimated tax declaration; (3) a refund claim; or (4) any license, permit, registration, or other application. The term also covers amendments or supplements, including supporting schedules, attachments, or lists that supplement or are part of a filed return.

“Return information” includes:

1. a taxpayer's identity;
2. the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax collected or withheld, tax under- or over-reportings, or tax payments; and
3. any other data received, recorded, prepared, or collected by or furnished to the DRS commissioner regarding a return or regarding any determination of liability for a tax, penalty, interest, fine, forfeiture, or other imposition or offense (CGS § 12-15 (h)(1) & (2)).

### ***Related Bills***

House Amendment “A” adds provisions that are similar or identical to those in other bills.

1. sSB 390 (File 640) makes numerous changes in the state's tobacco settlement law to implement the NPM Adjustment Settlement Agreement (i.e., the May 24, 2013 settlement between the state and participating manufacturers).
2. sSB 367 (File 457) bill modifies the starting point (i.e., Connecticut taxable estate) for calculating the estate tax for those

who die on or after January 1, 2015. It also gives these estates a tax credit for any gift taxes the decedent's spouse paid for Connecticut taxable gifts made by the decedent on or after January 1, 2005 that are includible in the decedent's gross estate.

3. sSB 390 (File 482) makes mostly identical changes to DRS statutes.

### **COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 50 Nay 0 (04/01/2014)